

Docket No. 56881 (45107)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: H. Althaus et al.

SERIAL NO: 10/048,113

EXAMINER: T. Tran

FILED: May 6, 2002

GROUP: 2826

FOR: OPTOELECTRONIC COMPONENT AND METHOD FOR THE PRODUCTION THEREOF

#1
Election
Innovation
3/17/03CERTIFICATE OF FACSIMILE TRANSMISSION

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By: 

Steven M. Jensen

FAX RECEIVEDAssistant Commissioner for Patents
Washington, D.C. 20231

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Sir:

RESPONSE TO OFFICE ACTION

Applicants are in receipt of the Office Action dated February 11, 2003 of the above-identified application.

In response to the Restriction Requirement, Applicants provisionally elect Group I, claims 27-43, with traverse. The present election is made solely to comply with the Office Action and should not be construed as a surrender of any subject matter of the application. Applicants reserve the right to file divisional application(s) on the non-elected claims.

Applicants traverse the Restriction Requirement on the basis that, while the claims of Groups I and II are drawn to an optoelectronic component and a method for producing an optoelectronic component, respectively, the Examiner has failed to demonstrate that the product as claimed can be made by "another and materially different process" or that the method can be used to make other and materially different product. According to MPEP §806.05(f), it is

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permissible to define a product in terms of a process by which it is made, in order to define the invention.

The Office Action states that: "the Group II invention could be made by a process materially different from that of the Group I invention. For example, the process of claim 44 can be materially altered by connecting the auxiliary carrier to the system carrier before connecting the auxiliary carrier to the element."

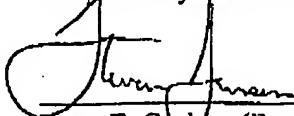
It should be noted that the claims of Group II (including claim 44) are not restricted to any particular order of steps in the method for producing an optoelectronic component. Applicant's claims are entitled to the broadest reasonable interpretation during patent examination (MPEP 2111). As the method claims of Group II recite a plurality of steps, but do not specify criticality as to the order in which the steps are performed, then the claims must be interpreted with the steps occurring in any reasonable order. Changing the order of the steps in the manner suggested by the Examiner does not demonstrate "another and materially different process"; it is simply another reasonable interpretation of the Applicant's claimed process.

Moreover, the Examiner has not shown that the method of Group II "can be used to make other and materially different product." The Examiner has merely shown another possible order of steps in the method, not that materially different product can be produced by the method. Withdrawal of the restriction requirement, and early consideration and allowance of the application are earnestly solicited.

Date: March 11, 2003

Phone: 617-439-4444

Respectfully submitted,



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TO: U.S. Patent & Trademark Office
Examining Group 2800

FAX NO.: 1-703-872-9318

FROM: Steven M. Jensen

FAX NO.: 617-439-4170

Our Docket No.: 56881 (45107)

No. of Pages (incl. cover): 3

Re: U.S. Serial Number 10/048,113

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